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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: SCOTT C. JOHNSON ET AL.

Filed: MAY 31, 2001

For: NETWORK CONNECTED COMPUTING SYSTEM  
INCLUDING STORAGE SYSTEM

Serial No.: 09/871,134

Group Art Unit: 2152

Examiner: UNKNOWN

Atty Docket No.: SURG:158

EXPRESS MAIL CERTIFICATION

NUMBER: EV302899735US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service, postage prepaid, under 37 C.F.R. 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313.

*Leahy Walker*  
Signature

*8.22.03*  
Date of Deposit

**Petition Concerning Notice of Foreign Filing a Foreign Application of a U.S.  
Patent Application For Which A Nonpublication Request Was Rescinded Under  
35 USC 122(b)(2)**

Attention: Office of Petitions  
MAIL STOP PETITIONS  
Commissioner For Patents  
P. O. Box 1450  
Alexandria, VA 22313

Dear Sir:

Applicants file this petition in connection with notice of filing a corresponding foreign application for a U.S. application which a nonpublication request was rescinded under 35 USC 122(b)(2). With respect to this petition, a petition fee of \$130.00 is submitted herewith. If for any reason such fee is not received, the Commissioner is authorized to deduct the requisite petition fee of \$130.00 under 37 CFR 1.17(h) from

Deposit Account No. 10-1205/SURG:158

06/01/2004 CKHLOK 00000020 101205 09871134

01 FC:2453 650.00 DA

**EV302899735US**

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AUG 27 2003

**OFFICE OF PETITIONS**

06/01/2004 CKHLOK 00000020 101205 09871134  
01 FC:2453 650.00 DA  
EV302899735US  
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OFFICE OF PETITIONS

In accordance with 37 CFR 1.136(a)(3), the Commissioner is authorized to treat any concurrent or future reply that requires a petition for an extension of time under 37 CFR 1.126(a) to be timely, as incorporating a petition for extension of time for the appropriate length of time, and the Commissioner is authorized to deduct any requisite extension of time fees under 37 CFR 1.16 to 1.21 from Deposit Account No. 10-1205.

### **BACKGROUND**

Applicants filed a non-publication request for the above identified application. On October 18, 2001, Applicants mailed via first class mail a Request to Rescind the Non-publication Request (Form PTO/SB/36) pursuant to 35 USC 122(b)(2)(B)(ii). Due to the anthrax disruption of the U.S. mail delivery to the PTO, the return postcard from the PTO for this filing was stamped January 3, 2002. A corresponding foreign application for the U.S. application was filed as a PCT application on November 2, 2001 with the USPTO office as the receiving office.

#### **I. REQUEST TO AFFIRM NOTICE OF FOREIGN FILING HAS BEEN PROVIDED**

Applicants have previously notified the Office of the foreign application filing by transmittal of PCT Application Serial No. PCT/US01/46144 to the USPTO by Express Mail on November 2, 2001. In this regard, PCT Application Serial No. PCT/US01/46144 included information identifying the above-captioned United States Patent Application Serial No. 09/871,134, by title, inventors, filing date and serial number. Thus, Applicants respectfully submit that they have previously satisfied the requirements of 35 USC § 122(b)(2)B(iii) by providing notice of foreign filing of the above-captioned application as of the date of the PCT filing. Alternatively, Applicants herewith submit as attached a Second and Supplemental Notice of Foreign Filing, as well as the following Alternative Request for Suspension of Rules Under 37 CFR 1.183 and Alternative Request for Revival of Unintentionally Abandoned Application under 1.37(b).

**II. ALTERNATIVE REQUEST FOR SUSPENSION OF RULES UNDER 37 CFR 1.183**

As stated above, Applicants respectfully assert that they have previously satisfied the requirements of 35 USC § 122(b)(2)B(iii) by notifying the USPTO of the PCT filing of the above captioned application. However, in the event that the Office nevertheless deems that the notification of foreign filing required by 35 USC § 122(b)(2)B(iii) has not been satisfied with regard to the above captioned United States Patent Application Serial No. 09/871,134, Applicants hereby petition for suspension of the rules under 37 CFR 1.183 with regard to the filing date accorded to the Request to Rescind the Non-publication Request filed in the above captioned application for the reasons set forth below.

On October 18, 2001, Applicants submitted a Request to Rescind the Non-publication Request that was previously filed in the above-captioned application. As evidence of the mailing date, the Request to Rescind the Non-publication Request was mailed with a certificate of mailing by first class mail (attached as Exhibit A). Despite being mailed 15 days prior to the deadline for filing the Request to Rescind the Non-publication Request (*i.e.*, the November 2, 2001 filing date of PCT Application Serial No. PCT/US01/46144), the return postcard accompanying the request was not processed and stamped by the PTO until January 3, 2002, or 77 days after mailing of the Request. This delay in the processing of Applicants' Request to Rescind the Non-publication Request coincided with postal delays related to the discovery of anthrax in a Washington DC mail facility. Due to this processing delay, Applicants' Request to Rescind the Non-publication Request was not processed and stamped by the PTO until after the November 2, 2001 deadline for filing the Request to Rescind the Non-publication Request (*see* Exhibit B).

The Applicants note that on March 11, 2002 the Office of Patent Legal Administration issued a notice relating to the filing dates of patent applications submitted during the period that the mails were disrupted due to the anthrax discovery. [Notice Attached as Exhibit C] With regard to patent applications, that notice stated that an applicant may file a petition under 37 CFR 1.183 with regard to the filing date accorded a patent application during the anthrax disruption though the notice stated that such petition may not necessarily be granted. The Applicants seek similar relief with regard to the Request to Rescind the Non-publication Request.

Because of the heretofore unprecedented interruption in mail service caused by the Anthrax situation, it imposes an undue burden on the Applicants should the USPTO consider the above-captioned United States Patent Application Serial no. 09/871,134 to be abandoned because of a filing date accorded to Applicants' Request to Rescind the Non-publication Request that corresponds to the PTO date stamp on the postcard of Exhibit B. This is especially true given the fact that Applicants submitted the Request to Rescind the Non-publication Request in ample time for receipt by the USPTO before the filing deadline, i.e., the filing date of PCT Application Serial No. PCT/US01/46144. Applicants therefore petition for suspension of the rules in accordance with 37 CFR 1.183, and request that the Request to Rescind the Non-publication Request mailed in the above-captioned United States Patent Application Serial no. 09/871,134 be accorded a filing date corresponding to October 18, 2001, the date the Request to Rescind the Non-publication Request was mailed with a Certificate of Mailing by First Class Mail.

**III. CONTINGENT REQUEST FOR REVIVAL OF AN APPLICATION FOR  
PATENT ABANDONED FOR FAILURE TO NOTIFY THE OFFICE OF A  
FOREIGN OR INTERNATIONAL FILING (37 CFR 1.137(f))**

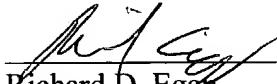
In the event that the Office deems that the notification of foreign filing required by 35 USC § 122(b)(2)B(iii) has not been satisfied with regard to the above captioned United States Patent Application serial no. 09/871,134, and should the Office deny the

Applicants' request for suspension of the rules under 37 CFR 1.183 submitted herein above and consider the above captioned application to be abandoned, pursuant to 37 CFR 1.137(f), Applicants hereby petitions for revival of this application under 37 CFR 1.137(b).

STATEMENT: The entire delay in filing the required notice of a foreign or international filing from the due date for the required notice until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

With respect to this contingent request under 37 CFR 1.137(b), the Director is authorized to deduct the requisite petition fee of \$650.00 for a Small Entity under 37 CFR 1.17(m) from Deposit Account No. 10-1205/SURG:158 should the office deny Requests I and II provided above.

Respectfully submitted,

  
\_\_\_\_\_  
Richard D. Egan  
Registration No. 36,788  
Attorney for Applicant

O'KEEFE, EGAN & PETERMAN, L.L.P.  
1101 Capital of Texas Highway South  
Building C, Suite 200  
Austin, Texas 78746  
512-347-1611  
512-347-1615 (Fax)

# Exhibit A

Received in the U.S. Patent and Trademark Office:  
In re Application of: Scott Johnson et al.  
Network Connected Computing System Including Storage System  
Serial No. 09/871,134; Filed 5/31/01

Enclosed herewith:

1. Request to Rescind Previous Nonpublication Request 35 USC 122(b)(2)(B)(ii)
2. Our return postcard.

SURGENT NETWORKS - SURG:158  
Mailed: 10-18-01  
RDE(mb)

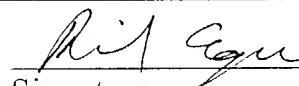
**REQUEST TO RESCIND  
PREVIOUS NONPUBLICATION  
REQUEST  
35 U.S.C. 122(b)(2)(B)(ii)**

Application Number:
09/871,134
Filing Date:
MAY 31, 2001
First Named Inventor:
SCOTT JOHNSON ET AL.
Title: NETWORK CONNECTED COMPUTING SYSTEM INCLUDING STORAGE SYSTEM
Atty. Docket Number:
SURG:158
Group Art Unit:
2152
Examiner:
UNKNOWN

I hereby **rescind** the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

10/18/01

Date

  
Signature

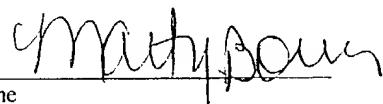
Richard D. Egan, Reg. No. 36,788  
Typed or printed name & Reg. No.

This request must be signed in compliance with 37 CFR 1.33(b).

Pursuant to 37 C.F.R. 1.8, I certify that this correspondence is being deposited with the U.S. Postal Service in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on the date below:

10-18-01

Date

  
Name

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AUG 27 2003

**OFFICE OF PETITIONS**

# Exhibit B

Received in the U.S. Patent and Trademark Office:  
In re Application of: Scott Johnson et al.  
**Network Connected Computing System Including Storage System**  
Serial No. 09/871,134; Filed 5/31/01

**Enclosed herewith:**

1. Request to Rescind Previous Nonpublication Request 35 USC 122(b)(2)(B)(ii)
2. Our return postcard.

**SURGENT NETWORKS - SURG:158**  
Mailed: 10-14-01  
RDE(mb)



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Exhibit C



## UNITED STATES PATENT AND TRADEMARK OFFICE

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Patent Applications submitted to the United States Patent and  
Trademark Office  
between September 11, 2001 and December 1, 2001  
via the United States Postal Service

**Office of Patent Legal Administration** << **Pre-OG Notices** << **Notice Concerning Patent Applications submitted to USPTO between 9/11/01 and 12/01/01 via USPS**

The fiscal year 2002 patent application filing rate is currently less than anticipated by the United States Patent and Trademark Office (USPTO). The USPTO suspects that this decrease may be due to postal service delays caused by increased security procedures related to the discovery of anthrax in a Washington DC mail facility.

Any patent applicant who submitted a patent application to the USPTO between September 11, 2001 and December 1, 2001 via the United States Postal Service (USPS), and who has not received either a patent application filing receipt or a stamped postcard return receipt from the USPTO (MPEP 503), is advised to promptly take the following course of action:

**Express Mail:** If the patent application was originally submitted using the "Express Mail" mailing procedures set forth in 37 CFR 1.10, applicant should first check with the USPS for confirmation of delivery to the USPTO. Status may be checked using the track/confirm feature on the USPS's Web site at <http://www.usps.com/shipping/epstrac.htm>. If the USPS does not confirm delivery of the patent application to the USPTO, applicant should promptly file a petition under 37 CFR 1.10(e) (as discussed below).

If the USPS confirms delivery of the patent application to the USPTO, the Office of Initial Patent Examination (OIPE) customer service center may be able to provide the application number and filing date of the application. The OIPE customer service center is frequently able to identify the patent application number from the Express Mail number or from payment information. Any request for the application number and filing date of an application should be submitted by facsimile to 703-308-7751. The facsimile should include the Express Mail mailing label or the Express Mail mailing label number and date mailed, a copy of original transmittal letter, the docket number, name of the first inventor, and contact information. In addition, the facsimile should include the following payment information: (1) if payment was by check, include a copy of the front and back of the check or the bank routing number, account number, check number, and payment amount; (2) if payment was by authorization to charge a deposit account, include the deposit account number and amount of payment; or (3) if payment was by authorization to charge a credit card, include the credit card number and amount of payment. The OIPE customer service center will conduct a search of its computer records for the application and reply within three business days with either the application number and filing date found in its computer records or a response that the application number was not found. Applicant may contact the OIPE customer service center by telephone at 703-308-1202.

If the patent application was originally submitted using the "Express Mail" mailing procedures set forth in 37 CFR 1.10 and the OIPE customer service center is unable to locate the application, applicant should promptly file a petition under 37 CFR 1.10(e) (no fee required) including:

- (1) a copy of the "Express Mail" mailing label showing the "date-in" (or copy of any other official notation by the USPS relied upon to show the date of deposit);
- (2) a copy of the originally deposited application papers showing the number of the "Express Mail" mailing label as placed on the originally deposited papers; and
- (3) a statement that the copy of the "Express Mail" mailing label and copy of the originally deposited application papers are true copies of the "Express Mail" mailing label and originally

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deposited application papers.

If the petition complies with the requirements of 37 CFR 1.10(e) and the application is otherwise entitled to a filing date, the USPTO will accord the application a filing date as of the date the patent application was originally deposited with the USPS as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

**Other than Express Mail:** If the patent application was not originally submitted using the "Express Mail" mailing procedures set forth in 37 CFR 1.10, the OIPE customer service center may be still able to provide the application number and filing date of the application. Any request for the application number and filing date of an application should be submitted by facsimile at 703-308-7751. The facsimile should include a copy of original transmittal letter, the docket number, name of the first inventor, contact information and the following payment information: (1) if payment was by check, include a copy of the front and back of the check or the bank routing number, account payment information; (2) if payment was by authorization to charge a deposit account, include the deposit account number and amount of payment; or (3) if payment was by authorization to charge a credit card, include the credit card number and amount of payment. The OIPE customer service center will conduct a search of its computer records for the application and reply within three business days with either the application number and filing date found in its computer records or a response that the application number was not found. Applicant may contact the OIPE customer service center by telephone at 703-308-1202.

If the OIPE customer service center is unable to locate the application, applicant should promptly file a copy of the originally deposited application papers. The application will be accorded a filing date as of the date the copy is received in the USPTO or the copy is deposited with the USPS in accordance with the "Express Mail" mailing procedures set forth in 37 CFR 1.10. Any applicant dissatisfied with that filing date may also file a petition under 37 CFR 1.182 or 1.183 (as appropriate) with the \$130.00 petition fee accompanied by the evidence and argument(s) that the applicant wants the USPTO to consider in determining whether the application is entitled to an earlier filing date. This should not be taken as an indication that any such petition will necessarily be granted. See MPEP 513.

Applicants should mail the copy of the application and any petition to:

Mail Stop Filing Date  
U.S. Patent and Trademark Office  
P.O. Box 2327  
Arlington, VA 22202

Alternatively, applicant may hand-carry the copy of the application and any petition to the Customer Service Window located in Room 1B03 of Crystal Plaza Building 2, Arlington, Virginia, 22202.

Inquiries regarding this notice should be directed to Senior Legal Advisor Eugenia A. Jones at 703-306-5586.

Date: 03/11/02

Signed: /s/

Stephen G. Kunin  
Deputy Commissioner  
for Patent Examination Policy

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*Last Modified: 03/14/2002 13:32:02*



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: SCOTT C. JOHNSON ET AL.

Filed: MAY 31, 2001

For: NETWORK CONNECTED COMPUTING SYSTEM INCLUDING  
STORAGE SYSTEM

Serial No.: 09/871,134

Group Art Unit: 2152

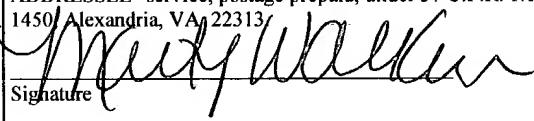
Examiner: UNKNOWN

Atty Docket No.: SURG:158

### EXPRESS MAIL CERTIFICATION

NUMBER: EV302899735US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service, postage prepaid, under 37 C.F.R. 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313.

Signature: 

Date of Deposit: 8/22/03

### SECOND AND SUPPLEMENTAL NOTICE OF FOREIGN FILING

Commissioner For Patents  
P. O. Box 1450  
Alexandria, VA 22313

Dear Sir:

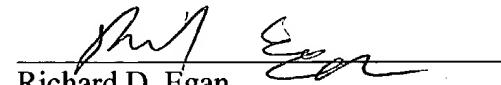
Applicants submit herewith a second and supplemental notice that subsequent to the filing of the above-identified application, a corresponding application was filed in another country, or under a multinational international treaty (e.g., filed under the Patent Cooperation Treaty), that requires publication of applications eighteen months after filing. The filing date of the subsequently-filed foreign or international application is November 2, 2001. The serial number of the subsequently-filed foreign or international application is PCT Application Serial No. PCT/US01/46144.

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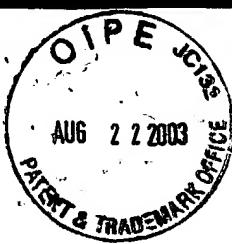
AUG 27 2003

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Respectfully submitted,

  
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Registration No. 36,788  
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08-25-03

BAC/PT  
fO'KEEFE, EGAN & PETERMAN, L.L.P.

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FAX: (512) 347-1615  
firm@oeplaw.com

August 22, 2003

SURG:001

Office of Petitions  
Mail Stop: Petitions  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313

*Re: Petition Concerning Notice of Foreign Filing A Foreign Application Of A U.S. Patent Application For Which A Nonpublication Request Was Rescinded Under 35 USC 122(b)(2)*

Dear Commissioner:

Enclosed is a "Petition Concerning Notice of Foreign Filing A Foreign Application Of A U.S. Patent Application For Which A Nonpublication Request Was Rescinded Under 35 USC 122(b)(2)". A substantially similar petition is concurrently being filed in the following cases:

09/797,414	09/797,411	09/871,401
09/797,198	09/797,413	09/871,134
09/797,199	09/797,200	09/947,869
09/797,197	09/797,404	09/879,848
09/797,507	09/797,201	09/879,836
09/797,412	09/797,506	09/879,809
09/797,195	09/879,810	09/879,812
09/879,811	09/879,834	

Each of these petitions addresses the impact of the anthrax delayed U.S. mail and the office's Notice dated June 5, 2003 entitled "Clarification Of The United States Patent And Trademark Office's Interpretation Of The Provisions Of 35 U.S.C. §122(b)(2)(B)(ii)-(iv).

Very truly yours,

William W. Enders

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